

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency

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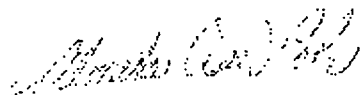
Notice FC-96

1980-B

For: State and County Offices

**Processing Farm Credit Programs
Guaranteed Loan Loss Claims When Bankruptcy Has Occurred**

Approved by: Acting Deputy Administrator, Farm Loan Programs



1 Overview

**A
Background**

FmHA Instruction 1980-B, Section 1980.144, provides direction for servicing Farm Credit Programs guaranteed loans under bankruptcy. Further instruction is needed to provide a uniform understanding between all Field Offices and the St. Louis Finance Office on the processing of guaranteed loan estimated or interest loss claims under Chapters 11, 12, and 13 (reorganization) bankruptcy.

**B
Purpose**

This notice clarifies how to process guaranteed loan estimated and interest loss claims in reorganization bankruptcy cases.

**C
Contacts**

State Offices shall direct questions regarding this notice to the Farm Credit Programs Guaranteed Servicing Branch, LSPMD, through the Area Office.

Disposal Date

January 1, 1998

Distribution

State Offices; State Offices relay to County Offices and Ag Credit Teams

12-30-96

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2 Action

A Bankruptcy and Guaranteed Loss Claims

The term confirmation date means the approval date of the bankruptcy plan. The term effective date means the date the plan will go into effect. A bankruptcy plan confirmation date may be different than the effective date. State and County Offices must review the court order to determine these dates.

Estimated loss claims will not be approved until the bankruptcy court approves the reorganization plan as required by the Lender's Agreement and FmHA Instruction 1980-B, Section 1980.144(d)(1). Approval and confirmation are one and the same term for determining when an estimated loss claim will be filed. **The borrower's performance under the reorganization plan is not complete upon confirmation of the plan.**

B Coding FmHA 449-30

County Offices and State Ag Credit Program staffs must ensure that FmHA 449-30 is coded correctly:

- in a Chapter 11, 12, or 13 reorganization, block 3A, "Report Type Code", must be coded as 5, "Loss-Bankruptcy Reorganization"
- for interest loss claims, block 3A must be coded as 8, "Interest Loss Payment".

Note: The Forms Manual Insert (FMI) for FmHA 449-30 incorrectly indicates that code 8 for block 3A is for "Shared Appreciation Recapture".

These codes are in compliance with the revised form and FMI for FmHA 449-30, which will be issued at a later date. However, the Finance Office accounting system has already made the conversion to the new codes.

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2 Action (Continued)

C

Court Treatment of Guaranteed Debt

The bankruptcy court may order the combining of guaranteed and nonguaranteed loans. If this occurs, FSA should recommend to the lender that separate ledgers be kept for handling the guaranteed portion of the debt, in the event of future losses. FSA cannot require the lender to keep separate ledgers.

D

Initial Estimated Loss Claim

The initial estimated loss claim submitted will entitle the lender to accrued interest on the entire principal balance up to the effective date, but will not include interest paid to the date of the check. The following must be attached to the initial estimated loss claim for a bankruptcy:

- a copy of the confirmed bankruptcy plan
- a memorandum clearly indicating the plan confirmation date and the date the plan is to go into effect.

Note: The bankruptcy plan will define the length and terms of the reorganization plan.

- any other relevant information concerning the loan and the loss claim.
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E

Revised Estimated Loss Claims

Any revision to the initial estimated loss claim must be based upon court-approved changes to the reorganization plan and will be coded as 5, "Loss-Bankruptcy Reorganization". FSA will review this claim to ensure that all principal and interest balances accurately reflect all previous estimated loss claim payments made during the term of the bankruptcy plan. The lender's claim will include interest paid to the effective date.

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2 Action (Continued)

F

**Interest Loss
Claims**

The lender will submit interest loss claims coded as 8, "Interest Loss Payment", annually during the reorganization plan if a court-ordered interest rate reduction has occurred.

If the lender had a variable rate that remains at or below the court-ordered rate during the claim period, a loss claim will not be submitted. However, a loss claim may be submitted for the time during the claim period that the lender's interest rate was above the court-ordered rate.

All loss claims for loss of interest due to a court-ordered interest rate reduction will be processed on the anniversary date of the effective date. The Finance Office will pay interest to this date or the completion date of the interest rate reduction, if earlier.

Interest loss incurred as a result of a permanent court-ordered interest rate reduction, which extends beyond the term of the reorganization plan, will be paid annually upon submission of the lender's loss claim. This claim will be submitted annually by the lender on the anniversary date of the effective date or the completion date of the interest rate reduction, if earlier. The Finance Office will pay the interest to the that date.

G

**Completion of
Bankruptcy Plan**

When performance under the confirmed bankruptcy plan has been completed, the Lender's Agreement and FmHA Instruction 1980-B, Section 1980.144(d)(1), require the lender to provide FSA with documentation necessary to review and adjust the estimated loss claim, if necessary, to reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured by the court. The lender must submit FmHA 1980-44 at the conclusion of the bankruptcy to accurately reflect the loan status as required by FmHA Instruction 1980-B, Section 1980.144(d)(1).

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2 Action (Continued)

H

Payments in Full

When a guaranteed loan that was included in a reorganization bankruptcy is paid in full under the terms of the loan without incurring an additional loss, County Offices will advise the Finance Office that the secured portion of the loan was paid in full. This will be accomplished by having the lender complete a memorandum stating that the loan has been paid in full. County Offices will receive the memorandum and enter the information into the guaranteed loan system. Choose option 1 from the Guaranteed Loan Main Menu to input the information.

I

Reimbursement of Overpayments

Whenever it is determined that the lender has been overpaid by FSA, the lender will prepare FmHA 449-30 to reimburse FSA the overpayment with interest accrual at the note rate, from the date of FSA's loss claim check to the date of settlement. The reimbursement of the overpayment with interest accrual at the note rate is required by the Lender's Agreement.

J

Collection on Unsecured Debt

Any time the lender receives a voluntary payment on the unsecured portion of the guarantee, the lender will submit to FSA its share of the proceeds.

State Offices will process these claims by sending the funds, along with FmHA 451-2. In addition, State Offices must complete a revised FmHA 449-30 with block 3A coded as D, "Voluntary Payment", and the amount of payment indicated in block 44. FmHA 449-30 will then be submitted to the Finance Office to adjust the existing loss claim.

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2 Action (Continued)

K

Final Loss Claims

According to the Lender's Agreement and FmHA Instruction 1980-B, Section 1980.144(d)(3), final loss claims for guaranteed loans that were reorganized under bankruptcy can only be processed when a liquidation takes place. Future recovery only applies when collections are made upon loans in which a final loss claim has been processed and the borrower has not been released from liability.

L

Ordering Forms

Obtain forms and instructions from the KC Warehouse.

- County Offices shall order through the State Office.
 - State offices shall submit FSA-159 to the KC Warehouse.
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